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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:	) Chapter 11
	)
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	) Case No. 18-23538 (RDD)
	) (Jointly Administered)
Debtors.	)
_____	) Re: Docket No. 3298

**OBJECTION OF BAKER-PROPERTIES LIMITED PARTNERSHIP  
TO PROPOSED CURE AMOUNT**

Baker-Properties Limited Partnership (“Baker-Properties”), by and through its undersigned counsel, hereby submits this objection (this “Objection”) to the proposed cure amount set forth for Baker-Properties lease with debtor, Sears, Roebuck and Co. (“Tenant”), in the *Notice of Assumption and Assignment of Additional Designatable Leases* [D.I. 3298] (the “Assumption Notice”). In support of this Objection, Baker-Properties respectfully states as follows:

**BACKGROUND**

1. Baker-Properties and Tenant are parties to that certain lease dated July 31, 1993, as most recently amended by that certain Fifth Amendment to Lease dated October 12, 2018 (the lease, together with all amendments, modifications, and extensions thereof, is hereinafter referred to as the “Lease”), related to non-retail property presently consisting of approximately 105,250 square feet of warehouse space located at 477 N. Lewis Road, Royersford, Pennsylvania (the

“Building”), designated as store number 8976 in the Assumption Notice and other filings by the Debtors.<sup>1</sup>

2. On January 23, 2019, the Debtors filed a *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1774] (the “Supplemental Cure Notice”).

3. The Supplemental Cure Notice listed the proposed cure amount for Baker-Property’s Lease in connection with the potential assumption and assignment of the Lease as part of a potential global sale transaction as \$48,851.13. Baker-Properties did not object to the proposed cure amount.

4. Transform Holdco LLC (“Transform Holdco”) filed the Assumption Notice on April 19, 2019, which stated a revised proposed cure amount for Baker-Properties’ Lease of \$0.00 (the “Revised Proposed Cure Amount”). The amount is denoted with an asterisk in the Assumption Notice to reflect that it has been revised since the Supplemental Cure Notice. It is unclear how the Debtors or Transform Holdco determined the Revised Proposed Cure Amount.

5. Paragraph 16 of the Assumption Notice provides that a counterparty to an “Additional Designatable Lease” denoted with an asterisk may file and serve an objection to the proposed cure cost for that lease in the Assumption Notice.

### **OBJECTION**

6. Baker-Properties objects to the Revised Proposed Cure Amount as said amount does include amounts that have accrued under the Lease and that Tenant has not paid since the Supplemental Cure Notice. As of the date hereof, the outstanding balance due and owing to Baker-Properties for post-petition obligations under the Lease is \$39,991.88 (the “Post-Petition Cure

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<sup>1</sup> As noted below, as of May 1, 2019, Tenant will be obligated to expand into an additional 31,500 square feet of space at the Building pursuant to the Fifth Amendment to the Lease.

Amount”), consisting of (a) \$12,134.36 in property taxes invoiced on March 1, 2019; (b) \$12,101.47 in utilities invoiced on March 7, 2019; (c) \$3,198.17 in late fees for past due rent assessed on April 1, 2019; (d) \$823.95 for late fees for unpaid property taxes assessed on April 1, 2019; and (e) \$11,733.93 in utilities invoiced on April 9, 2019.<sup>2</sup> Copies of the referenced invoices are attached as Exhibit A. Assuming these amounts are not satisfied in the interim, additional late fees will accrue on May 1, 2019 and the first day of each successive month thereafter.

7. In addition to the Post-Petition Cure Amount, Baker-Properties is due and owing \$13,014.09 from Tenant for pre-petition obligations under the Lease [*see* claim number 16379 and materials annexed thereto]. As such, the total outstanding balance presently due Baker-Properties from Tenant under the Lease is \$53,005.97 (the “Total Cure Amount”).

8. Baker-Properties further objects to the Assumption Notice insofar as the Proposed Cure Amount does not include amounts that may become due under the Lease after the Lease is assumed, or assumed and assigned, but which may relate to the pre-assumption period. Any order establishing a cure amount in connection with the assumption or assumption and assignment of the Lease must provide for the payment of all charges due and/or accrued in the ordinary course under the terms of the Lease notwithstanding the Proposed Cure Amount or the currently stated Post-Petition Cure Amount or the Total Cure Amount.

9. Additionally, pursuant to the aforementioned Fifth Amendment to the Lease, the Tenant is obligated to take on an additional 31,500 square feet of rentable space at the Building effective May 1, 2019. A copy of the Fifth Amendment to the Lease is attached as Exhibit B. Any order providing for the assignment and assumption of the Lease must clearly include the

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<sup>2</sup> The Tenant’s payment for the April 9, 2019 utility invoice is due by May 9, 2019.

assumption and assignment of the Fifth Amendment to the Lease and all of Tenant's obligations thereunder.

**RESERVATION OF RIGHTS**

10. Baker-Properties reserves its rights to supplement this Objection to add additional sums that may accrue and/or become due under the Lease after the date hereof.

WHEREFORE, Baker-Properties respectfully requests that any assumption of the Lease be conditioned upon (i) payment of a cure amount totaling not less than the total amount due as of the date hereof (plus additional interest, late fees, and other sums that may accrue and/or become due under the Lease after the date hereof), (ii) assurance that any assignment and assumption of the Lease includes assumption and assignment of the Fifth Amendment of the Lease and all of Tenant's obligations thereunder; and (iii) for such other and further relief as the Court deems just and proper.

Dated: Morristown, New Jersey  
April 26, 2019

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By: /s/ Michael R. Herz

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